

Superseded 3/18/2016

32B-6-703 Commission's power to issue on-premise beer retailer license.

- (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of beer on the premises as an on-premise beer retailer, the person shall first obtain an on-premise beer retailer license from the commission in accordance with this part.
- (2)
 - (a) The commission may issue an on-premise beer retailer license to establish on-premise beer retailer licensed premises at places and in numbers as the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as an on-premise beer retailer.
 - (b) At the time that the commission issues an on-premise beer retailer license, the commission shall designate whether the on-premise beer retailer is a tavern.
 - (c) The commission may change its designation of whether an on-premise beer retailer is a tavern in accordance with rules made by the commission.
 - (d)
 - (i) In determining whether an on-premise beer retailer is a tavern, the commission shall determine whether the on-premise beer retailer will engage primarily in the retail sale of beer for consumption on the establishment's premises.
 - (ii) In making a determination under this Subsection (2)(d), the commission shall consider:
 - (A) whether the on-premise beer retailer will operate as one of the following:
 - (I) a beer bar;
 - (II) a parlor;
 - (III) a lounge;
 - (IV) a cabaret; or
 - (V) a nightclub;
 - (B) if the on-premise beer retailer will operate as described in Subsection (2)(d)(ii)(A):
 - (I) whether the on-premise beer retailer will sell food in the establishment; and
 - (II) if the on-premise beer retailer sells food, whether the revenue from the sale of beer will exceed the revenue of the sale of food;
 - (C) whether full meals including appetizers, main courses, and desserts will be served;
 - (D) the square footage and seating capacity of the premises;
 - (E) what portion of the square footage and seating capacity will be used for a dining area in comparison to the portion that will be used as a lounge or bar area;
 - (F) whether the person will maintain adequate on-premise culinary facilities to prepare full meals, except a person that is located on the premises of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;
 - (G) whether the entertainment provided on the premises of the beer retailer will be suitable for minors; and
 - (H) the beer retailer management's ability to manage and operate an on-premise beer retailer license including:
 - (I) management experience;
 - (II) past beer retailer management experience; and
 - (III) the type of management scheme that will be used by the beer retailer.
 - (e) On or after March 1, 2012:
 - (i) To be licensed as an on-premise beer retailer that is not a tavern, a person shall:
 - (A) maintain at least 70% of the person's total gross revenues from business directly related to a recreational amenity on or directly adjoining the licensed premises of the beer retailer;
 - or

- (B) have a recreational amenity on or directly adjoining the licensed premises of the beer retailer and maintain at least 70% of the person's total gross revenues from the sale of food.
 - (ii) The commission may not license a person as an on-premise beer retailer if the person does not:
 - (A) meet the requirements of Subsection (2)(e)(i); or
 - (B) operate as a tavern.
 - (iii)
 - (A) A person licensed as an on-premise beer retailer that is not a tavern as of July 1, 2011 shall notify the department by no later than August 1, 2011, whether effective March 1, 2012, the person will seek to be licensed as a beer-only restaurant licensee, a tavern, or an on-premise beer retailer that meets the requirements of Subsection (2)(e)(i).
 - (B) If an on-premise beer retailer fails to notify the department as required by Subsection (2)(e)(iii)(A), the on-premise beer retailer's license expires as of February 29, 2012, and to operate as an on-premise beer retailer after February 29, 2012, the on-premise beer retailer is required to apply as a new licensee, and any bar or bar structure on the premises of an on-premise beer retailer license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i) will not be grandfathered under Subsection 32B-6-902(1).
 - (iv) A person who, after August 1, 2011, applies for an on-premise beer retailer license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i), may not have or construct facilities for the dispensing or storage of an alcoholic product that do not meet the requirements of Subsection 32B-6-905(12)(a)(ii).
- (3) Subject to Section 32B-1-201:
- (a) The commission may not issue a total number of on-premise beer retailer licenses that are taverns that at any time exceeds the number determined by dividing the population of the state by 54,147.
 - (b) The commission may issue a seasonal on-premise beer retailer license for a tavern in accordance with Section 32B-5-206.
- (4)
- (a) Unless otherwise provided in Subsection (4)(b):
 - (i) only one on-premise beer retailer license is required for each building or resort facility owned or leased by the same person; and
 - (ii) a separate license is not required for each retail beer dispensing location in the same building or on the same resort premises owned or operated by the same person.
 - (b)
 - (i) Subsection (4)(a) applies only if each retail beer dispensing location in the building or resort facility operates in the same manner.
 - (ii) If each retail beer dispensing location does not operate in the same manner:
 - (A) one on-premise beer retailer license designated as a tavern is required for the locations in the same building or on the same resort premises that operate as a tavern; and
 - (B) one on-premise beer retailer license is required for the locations in the same building or on the same resort premises that do not operate as a tavern.